

## REMARKS

Applicant intends this response to be a complete response to the Examiner's **31 November 2005** Final Office Action. Applicant has labeled the paragraphs in his response to correspond to the paragraph labeling in the Office Action for the convenience of the Examiner.

### *Election/Restriction*

Applicants still disagree with the restriction requirement. Moreover, Applicants are somewhat surprised with a restriction requirement followed by a Final Office Action. Applicants' attorney has encountered such late stage restriction followed by final office actions. Applicants' does not understand this practice as it is a very recent phenomena. Applicants' attorney, therefore, respectfully requests withdrawal of the final, because the restriction requirement was not caused by any action of the Applicants.

### *Rejections Under 35 U.S.C. §112, ¶2*

**Claims 13** stand rejected under 35 U.S.C. § 112, ¶2 as having inconsistent limitations in the same claim. Applicants have amended claim 13 to remove this apparent inconsistency. Applicants, therefore, respectfully request withdrawal of this section 112, second paragraph rejection.

### *Rejections Under 35 U.S.C. §103*

**Claims 8-13** stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Derwent English abstract of Chinese Pat. Appl. No. 1089152 A (1994). Applicants traverse and respectfully request reconsideration based on the above claim amendments, if any, and the remarks presented herein.

Applicants has read the English abstract of CN '152 and do not fully agree with the Examiner's contentions. The abstract states as follows:

Onion product in the form of tablet, instant granules, capsule, powder, emulsion, etc. includes food, beverage, health-care medicine. prepared by adding Chinese herbal medicines, vegetables and food in pure onion product.  
USE - It may be used to cure hyperlipemia, hypercholesterol, arteriosclerosis, hypertension, arthritis, common cold, dysentery, rabies, diabetes, and baldness.

The CN '152 composition appears to be an onion product prepared by adding Chinese herbal medicines, vegetables and food in a pure onion product. Applicants are not at all sure the relative amount of onion in the composition. Clearly, the composition includes "Chinese herbal medicines." There simply is no clear teaching that the onion is the responsible for the purported therapeutic benefits of the composition. One cannot rely on a reference to refute a composition, when the reference is unclear as to the nature of the composition and the parts of the composition that are responsible for its activity. CN '152 clearly does not suggest that an onion product alone would have therapeutical benefits. Moreover, CN'152 does not disclose, teach or suggest that a composition having particles between 1 and 1400 microns and a water content of less than 5.5% would represent such a composition or that the dose should be between 5 and 50 grams per day.

Applicants, therefore, respectfully request withdrawal of this section 103 rejection.

**Claims 8, 13 and 39-40** stand rejected under 35 U.S.C. § 103(a) as being unpatentable over over Derwent English abstract of Chinese Pat. Appl. No. 1089152 A (1994) in view of USPN 4409237. Applicants traverse and respectfully requests reconsideration based on the above claim amendments, if any, and the remarks presented herein.

Again, CN '152 does not provide adequate information to determine the nature of the composition, but it clearly does not disclose a particulate composition where the particles are of a particular particle size distribution. Moreover, CN'152 does not disclose that this particle size distribution is critical for therapeutic efficacy. Combining CN'152 with US'237 does not solve this problem, because the composition is not merely a product optimization problem. Onions have been known for many years and for many years have been made into dried flaked or particulated products, but not until the present invention was a particulate material derived from onions possessing wide ranging anti-viral activity. It is this discovery that is the key to the present invention. This is not an optimization problem. CN'152 does not disclose that the medicinal benefits of the product are related to the onion. In fact, CN'152 can be viewed to teach that onion is not responsible for the therapeutic efficacy, but that the Chinese herbal medicines are instead. CN'152 cannot be read to mean that onion is

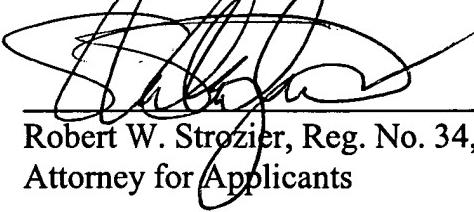
the therapeutic agent, because onion is not referred to as a Chinese herbal medicine – they are added to the onion product. Based on the fact that Chinese herbal medicines are added to the product, it appears that the onion product is simply a carrier for the medicine and the not the medicine itself as is true in this invention.

Because the present invention is not a product optimization problem and because CN'152 strongly directs away from onion as being the medicine, Applicants respectfully request withdrawal of this section 103(a) rejection.

Having fully responded to the Examiner's Non-Final Office Action, Applicant respectfully urges that is application be passed onto allowance.

If it would be of assistance in resolving any issues in this application, the Examiner is kindly invited to contact applicant's attorney Robert W. Strozier at 713.977.7000.

Respectfully submitted,

  
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